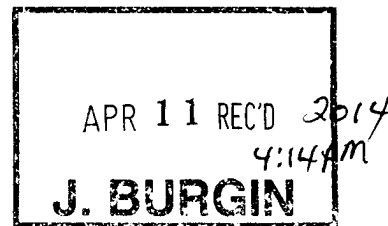


COMMONWEALTH OF KENTUCKY
OFFICE OF THE GOVERNOR

STEVEN L. BESHEAR
GOVERNOR



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VETO MESSAGE FROM THE
GOVERNOR OF THE COMMONWEALTH OF KENTUCKY
REGARDING HOUSE BILL 407 OF THE
2014 REGULAR SESSION

RECEIVED AND FILED
DATE *April 28, 2014*
10:54am
ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY *R. Adler*

I, Steven L. Beshear, Governor of the Commonwealth of Kentucky, pursuant to the authority granted under Section 88 of the Kentucky State Constitution, do hereby veto the following:

House Bill 407 of the 2014 Regular Session of the General Assembly in its entirety.

I am vetoing this bill because it encumbers an otherwise well intentioned policy measure with unnecessary elements relating to a single, near term project, which should not be enshrined into permanent law.

The primary purpose of HB 407 is to create or further enhance mechanisms to facilitate public-private partnerships – or P3s - for the procurement of services, and the procurement, construction or financing of capital projects, including transportation projects. The Commonwealth has long embraced creative methods for improving the state's services, capital assets and infrastructure, especially those that can leverage private partners for the benefit of the public good. Fortunately, except in the area of transportation, Kentucky's existing procurement laws already allow the Commonwealth to partner with the private sector for a variety of services and capital projects, and this veto will not impede our abilities to continue with P3s in those areas in any way. We will continue to welcome innovative ideas and proposals from the private sector to enhance and improve state assets and services.

While House Bill 407 grants broad and necessary authority to governmental entities to utilize P3s for transportation projects generally, it expressly prohibits their use in cases involving the state of Ohio absent additional legislative scrutiny and review. It further expressly prohibits the use of tolls to fund a project to construct a replacement for the Brent Spence Bridge. It is imprudent to eliminate any potential means of financing construction of such a vital piece of

infrastructure that serves not only the Commonwealth and the State of Ohio, but also the eastern United States. Issues relating to a single project such as this should not be enshrined in permanent law.

This the 11th day of April, 2014

A handwritten signature in black ink, appearing to read 'Steve Beshear', written over a horizontal line.

Steven L. Beshear, Governor



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2014 REGULAR SESSION

HOUSE BILL NO. 407

AS ENACTED

FRIDAY, MARCH 28, 2014

1 AN ACT relating to the financing of public-private partnerships and declaring an
2 emergency.

3 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

4 ➔Section 1. KRS 45A.030 is amended to read as follows:

5 As used in this code~~[, unless the context requires otherwise]~~:

6 (1) "Business" means any corporation, partnership, individual, sole proprietorship, joint
7 stock company, joint venture, or any other legal entity through which business is
8 conducted;

9 (2) "Change order" means a written order signed by the purchasing officer, directing the
10 contractor to make changes that the changes clause of the contract authorizes the
11 purchasing officer to order without the consent of the contractor;

12 (3) "Chief purchasing officer" means the secretary of the Finance and Administration
13 Cabinet, who shall be responsible for all procurement of the Commonwealth except
14 as provided by KRS Chapters 175, 176, 177, and 180;

15 (4) "Construction" means the process of building, altering, repairing, improving, or
16 demolishing any public structures or buildings, or other public improvements of any
17 kind to any public real property. It does not include the routine maintenance of
18 existing structures, buildings, or real property;

19 (5) "Construction manager-agency" means services to assist the purchasing agency
20 manage construction that are procured through a contract that is qualifications-
21 based;

22 (6) "Construction management-at-risk" means a project delivery method in which the
23 purchasing officer enters into a single contract with an offeror that assumes the risk
24 for construction at a contracted guaranteed maximum price as a general contractor,
25 and provides consultation and collaboration regarding the construction during and
26 after design of a capital project. The contract shall be subject to the bonding
27 requirements of KRS 45A.190;

- 1 (7) "Contract" means all types of state agreements, including grants and orders, for the
2 purchase or disposal of supplies, services, construction, or any other item. It
3 includes awards; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive
4 type; contracts providing for the issuance of job or task orders; leases; letter
5 contracts; purchase orders; public-private partnership agreements; and insurance
6 contracts except as provided in KRS 45A.022. It includes supplemental agreements
7 with respect to any of the foregoing;
- 8 (8) "Contract modification" means any written alteration in the specifications, delivery
9 point, rate of delivery, contract period, price, quantity, or other contract provisions
10 of any existing contract, whether accomplished by unilateral action in accordance
11 with a contract provision or by mutual action of the parties to the contract. It
12 includes bilateral actions, such as supplemental agreements, and unilateral actions,
13 such as change orders, administrative changes, notices of termination, and notices
14 of the exercise of a contract option;
- 15 (9) "Contractor" means any person having a contract with a governmental body;
- 16 (10) "Data" means recorded information, regardless of form or characteristic;
- 17 (11) "Design-bid-build" means a project delivery method in which the purchasing officer
18 sequentially awards separate contracts, the first for architectural, engineering, or
19 engineering-related services to design the project and the second for construction of
20 the capital project according to the design. The contract shall be subject to the
21 bonding requirements of KRS 45A.185;
- 22 (12) "Design-build" means a project delivery method in which the purchasing officer
23 enters into a single contract for design and construction of a capital project. The
24 contract shall be subject to the bonding requirements of KRS 45A.190;
- 25 (13) "Designee" means a duly authorized representative of a person holding a superior
26 position;
- 27 (14) "Document" means any physical embodiment of information or ideas, regardless of

- 1 form or characteristic, including electronic versions thereof;
- 2 (15) "Employee" means an individual drawing a salary from a governmental body,
3 whether elected or not, and any nonsalaried individual performing personal services
4 for any governmental body;
- 5 (16) "Governmental body" means any department, commission, council, board, bureau,
6 committee, institution, legislative body, agency, government corporation, or other
7 establishment of the executive or legislative branch of the state government;
- 8 (17) "Meeting" means all gatherings of every kind, including video teleconferences;
- 9 (18) "Negotiation" means contracting by either the method set forth in KRS 45A.085,
10 45A.090, or 45A.095;
- 11 (19) "Person" means any business, individual, organization, or group of individuals;
- 12 (20) "Private partner" means any entity that is a partner in a public-private
13 partnership other than:
14 (a) The Commonwealth of Kentucky, or any department or agency thereof;
15 (b) The federal government;
16 (c) Any other state government; or
17 (d) Any agency of a state, federal, or local government;
- 18 (21) "Procurement" means the purchasing, buying, renting, leasing, or otherwise
19 obtaining of any supplies, services, or construction. It includes all functions that
20 pertain to the procurement of any supply, service, or construction item, including
21 description of requirements, selection and solicitation of sources, preparation and
22 award of contract, and all phases of contract administration;
- 23 (22) "Public-private partnership" means a method of procurement, construction, or
24 financing of capital projects, as defined in KRS 45.750, or procurement of
25 services, pursuant to a written public-private partnership agreement entered into
26 pursuant to Section 3 of this Act and administrative regulations promulgated
27 thereunder, between:

1 (a) At least one (1) private partner; and

2 (b) The Commonwealth of Kentucky or any department or agency thereof;

3 ~~(23)~~~~{(21)}~~ "Purchase request" or "purchase requisition" means that document whereby a
4 using agency requests that a contract be obtained for a specified need, and may
5 include, but is not limited to, the technical description of the requested item,
6 delivery schedule, transportation, criteria for evaluation of solicitees, suggested
7 sources of supply, and information supplied for the making of any written
8 determination and finding required by KRS 45A.025;

9 ~~(24)~~~~{(22)}~~ "Purchasing agency" means any governmental body that is authorized by this
10 code or its implementing administrative regulations or by way of delegation from
11 the chief purchasing officer to contract on its own behalf rather than through the
12 central contracting authority of the chief purchasing officer;

13 ~~(25)~~~~{(23)}~~ "Purchasing officer" means any person authorized by a governmental body in
14 accordance with procedures prescribed by administrative regulations to enter into
15 and administer contracts and make written determinations and findings with respect
16 thereto. The term includes an authorized representative acting within the limits of
17 authority;

18 ~~(26)~~~~{(24)}~~ "Services" means the rendering by a contractor of its time and effort rather
19 than the furnishing of a specific end product, other than reports that are merely
20 incidental to the required performance of services;

21 ~~(27)~~~~{(25)}~~ "Supplemental agreement" means any contract modification that is
22 accomplished by the mutual action of the parties;

23 ~~(28)~~~~{(26)}~~ "Supplies" means all property, including but not limited to leases of real
24 property, printing, and insurance, except land or a permanent interest in land;

25 ~~(29)~~~~{(27)}~~ "Using agency" means any governmental body of the state that utilizes any
26 supplies, services, or construction purchased under this code;

27 ~~(30)~~~~{(28)}~~ "Video teleconference" means one (1) meeting, occurring in two (2) or more

locations, where individuals can see and hear each other by means of video and audio equipment; and

~~(31)~~~~(29)~~ "Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

➔Section 2. KRS 45A.075 is amended to read as follows:

Except as otherwise authorized by law, all state contracts shall be awarded by:

- (1) Competitive sealed bidding, pursuant to KRS 45A.080; or
- (2) Competitive negotiation, pursuant to KRS 45A.085, ~~and~~ 45A.090, ~~or~~ 45A.180, or Section 3 of this Act; or
- (3) Noncompetitive negotiation, pursuant to KRS 45A.095; or
- (4) Small purchase procedures, pursuant to KRS 45A.100.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

(1) A public-private partnership method may be utilized as provided in this section and administrative regulations promulgated thereunder. State contracts using this method shall be awarded by competitive negotiation on the basis of best value.

(2) A contracting body utilizing a public-private partnership shall continue to be responsible for oversight of any function that is delegated to or otherwise performed by a private partner.

(3) A public-private partnership shall not be used to circumvent any requirements or restrictions placed upon any contracting body pursuant to this chapter. A private partner shall be subject to the same requirements, restrictions, and standards placed upon the contracting body by this chapter.

(4) The secretary of the Finance and Administration Cabinet shall promulgate

administrative regulations setting forth criteria to be used in determining when a public-private partnership is to be used for a particular project by December 31, 2014. The administrative regulations shall reflect the General Assembly's intent to promote and encourage the use of public-private partnerships in the Commonwealth. The secretary shall consult with design-builders, construction managers, contractors, design professionals, including engineers and architects, the Associated General Contractors of Kentucky, the Kentucky Chamber of Commerce, the Kentucky Bankers Association, and other appropriate professionals during the development of these administrative regulations. The purchasing officer shall submit a written statement setting forth the facts recommending the delivery method to be used for a particular project.

(5) A request for proposal for a project utilizing a public-private partnership shall include at a minimum:

- (a) The parameters of the proposed public-private partnership agreement;
- (b) The duties and responsibilities to be performed by the private partner or partners;
- (c) The methods of oversight to be employed by the contracting body;
- (d) The duties and responsibilities that are to be performed by the contracting body and any other partners to the contract;
- (e) The evaluation factors and the relative weight of each to be used in the scoring of awards;
- (f) Plans for financing and operating the qualifying project and the revenues, service payments, bond financings, and appropriations of public funds needed for the qualifying project;
- (g) Comprehensive documentation of the experience, capabilities, capitalization and financial condition, and other relevant qualifications of the private entity;

1 (h) The proposed use of Kentucky-based subcontractors, design services,
2 architects, engineering services, employees, and financial services if such
3 contractors and service providers are available and have the necessary
4 experience and expertise required for the completion of the project at a
5 competitive cost; and

6 (i) Other information required by the contracting body or the cabinet to
7 evaluate the proposals submitted by respondents and the overall proposed
8 public-private partnership.

9 (6) A private entity desiring to be a private partner shall demonstrate to the
10 satisfaction of the contracting body and the cabinet that it is capable of
11 performing any duty, responsibility, or function it may be authorized or directed
12 to perform as part of the public-private partnership agreement.

13 (7) When a request for proposal for a project utilizing a public-private partnership is
14 issued for the financing of a capital project, the contracting body shall transmit a
15 copy of the request for proposal to the Capital Projects and Bond Oversight
16 Committee staff, clearly identifying to the staff that a public-private partnership is
17 being utilized.

18 (8) A request for proposal or other solicitation may be canceled, or all proposals may
19 be rejected, if it is determined in writing that such action is taken in the best
20 interest of the Commonwealth and approved by the purchasing officer.

21 (9) In the case of any public-private partnership for a capital project with an
22 aggregate value of twenty-five million dollars (\$25,000,000) or more, the project
23 shall be authorized by the General Assembly by inclusion in the branch budget
24 bill or by any other means. No public-private partnership agreement shall take
25 effect unless and until the project is authorized by the General Assembly.

26 (10) A state agency proposing a project pursuant to this section shall, to the extent
27 practical, consult with the officials representing the units of local government in

which the proposed project is to be located in order to obtain the advice and input on the local impact of the proposed project, including information regarding land use planning, transportation planning, economic development, and any other factors having a direct impact to the local community.

(11) Upon issuance of a public-private partnership agreement, the contracting body shall submit the contract to the Government Contract Review Committee for review in accordance with KRS 45A.690 to 45A.725. The contracting body shall ensure the contract clearly identifies to the committee that a public-private partnership is being utilized. Upon disapproval of or objection to the contract by the committee, the contracting body shall determine whether the contract shall be revised to comply with the objections of the committee, be canceled, or remain in effect.

(12) Any corporation as described by KRS 45.750(2)(c), or as created under the Kentucky Revised Statutes as a governmental agency and instrumentality of the Commonwealth, that manages its capital construction program shall:

- (a) Adhere to the administrative regulations promulgated under this section when utilizing a public-private partnership for financing capital projects;
- (b) Report to legislative committees as specified in this section; and
- (c) Submit public-private partnership agreements issued by it to the General Assembly for authorization as provided in subsection (9) of this section.

(13) (a) The governing body of a postsecondary institution that manages its capital construction program under KRS 164A.580 shall:

- 1. Report to the Capital Projects and Bond Oversight Committee staff as specified in this section; and
- 2. Not be required to comply with the provisions of subsections (9) and (11) of this section.

(b) Any provision of a public-private partnership agreement issued by a

postsecondary institution which provides for a lease by or to the postsecondary institution shall be valid and enforceable if approved by the governing board of the institution.

(14) The secretaries of the Finance and Administration Cabinet and the Transportation Cabinet shall study and develop recommendations to the General Assembly on the implementation of a process at the state and local level to accept unsolicited proposals for the purpose of construction and maintenance of capital projects, transportation infrastructure, and the contracting of services provided by government. The secretaries shall report their findings to the Legislative Research Commission, the Interim Joint Committee on Appropriations and Revenue, the Interim Joint Committee on Transportation, and the Interim Joint Committee on State and Local Government by December 31, 2014. The secretaries shall consult with design-builders, construction managers, contractors, design professionals, the Associated General Contractors of Kentucky, the Kentucky League of Cities, the Kentucky Association of Counties, the Kentucky Association of Highway Contractors, the Kentucky Chamber of Commerce, the Kentucky Bankers Association, the Kentucky School Boards Association, and other appropriate professionals during the development of these recommendations.

➔ Section 4. KRS 65.025 is amended to read as follows:

(1) As used in this section:

- (a) "Employ" means to hire, retain, or otherwise contract with an individual or entity for goods or services;
- (b) "Local government" means a city, county, charter county government, urban-county government, consolidated local government, or a special district;
- (c) "Construction manager" means a person who coordinates and communicates the entire project process, clarifying cost and time consequences of design

1 decisions as well as clarifying construction feasibility, and who manages the
 2 bidding, awarding, and construction phases of the project;

3 (d) "Design-build" means a system of contracting under which one (1) entity
 4 performs both architecture/engineering and construction under one (1) single
 5 contract;~~{and}~~

6 (e) "Best value" means a procurement in which the decision is based on the
 7 primary objective of meeting the specific business requirements and best
 8 interests of the local government. These decisions shall be based on objective
 9 and quantifiable criteria that shall include price and that have been
 10 communicated to the offerors as set forth in the invitation for bids or request
 11 for proposals. Every invitation for bids or request for proposals shall provide
 12 that an item equal to that named or described in the specifications may be
 13 furnished. The specification may identify a sole brand in cases where, in the
 14 written opinion of the chief procurement officer, documented unique and valid
 15 conditions require compatibility, continuity, or conformity with established
 16 standards. An item shall be considered equal to the item named or described
 17 if, in the opinion of the owner and the design professional responsible for the
 18 specifications:

- 19 1. It is at least equal in quality, durability, appearance, strength, design, and
 20 other criteria deemed appropriate;
- 21 2. It will perform at least equally the function imposed by the general
 22 design for the public work being contracted for or the material being
 23 purchased; and
- 24 3. It conforms substantially to the detailed requirements for the item in the
 25 specifications;

26 (f) "Private partner" means any entity that is a partner in a public-private
 27 partnership other than:

1 1. The Commonwealth of Kentucky, or any department or agency
 2 thereof;

3 2. The federal government;

4 3. Any other local government;

5 4. Any other state government; or

6 5. Any agency of a state, federal, or local government; and

7 (g) "Public-private partnership" means a method of procurement,
 8 construction, or financing of capital projects, or procurement of services,
 9 pursuant to a written public-private partnership agreement entered into
 10 pursuant to Section 5 of this Act and administrative regulations
 11 promulgated thereunder, between:

12 1. At least one (1) private partner; and

13 2. A local government.

14 (2) A local government shall not employ the same entity to provide both architectural
 15 services and construction management services on the same capital construction
 16 project. No local government shall knowingly employ an officer, employee, or agent
 17 of, or an immediate family member of an officer, employee, or agent of:

18 (a) The architectural firm that provided the architectural services to also provide
 19 construction management services for the same capital construction project
 20 for which the architectural firm provided architectural services; or

21 (b) The construction management firm that provided the construction
 22 management services to also provide architectural services for the same
 23 capital construction project for which the construction management firm
 24 provided construction management services.

25 (3) A violation of subsection (2) of this section shall suspend the local government
 26 from receiving any financial assistance from the state, or any state agency, with
 27 respect to the project for which the architectural or construction management firm

was employed until the matter is resolved.

(4) Local governments initiating a capital construction project shall incorporate, or shall require architects or construction managers in the employment of the local government to incorporate, best value procurement criteria in all invitations for bids or requests for proposals as provided for in subsection (1) of this section.

(5) Nothing in this section shall prohibit a local government from using:

(a) Design-build as a method of providing for capital construction services as long as best value contracting principles are followed as specified in subsection (1) of this section; or

(b) A public-private partnership as long as the provisions of Section 5 of this Act are followed.

→SECTION 5. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Best value" has the same meaning as in Section 4 of this Act;

(b) "Cabinet" means the Finance and Administration Cabinet;

(c) "Local government" means a city, county, charter county, urban-county government, consolidated local government, or unified local government of the Commonwealth;

(d) "Private partner" has the same meaning as in Section 4 of this Act; and

(e) "Public-private partnership" has the same meaning as in Section 4 of this Act.

(2) A public-private partnership method may be utilized by a local government as provided in this section and administrative regulations promulgated thereunder. Contracts using this method shall be awarded by competitive negotiation on the basis of best value, and shall in all cases take effect only if executed by the legislative body of the local government.

1 (3) A local government utilizing a public-private partnership shall continue to be
 2 responsible for oversight of any function that is delegated to or otherwise
 3 performed by a private partner.

4 (4) A public-private partnership shall not be used to circumvent any requirements or
 5 restrictions placed upon any local government pursuant to any provision of the
 6 Kentucky Revised Statutes. A private partner shall be subject to the same
 7 requirements, restrictions, and standards placed by statute upon the local
 8 government.

9 (5) All public-private partnership agreements executed by a local government under
 10 this section shall be approved by the legislative body of the local government at a
 11 public meeting, and shall include at a minimum the following provisions:

12 (a) 1. Property owned by a local government shall not be sold, conveyed, or
 13 disposed of in any way at any time; and

14 2. Leases issued by a local government to any party shall not be
 15 transferred in any way by that party;

16 without the specific and express written consent of the legislative body of
 17 the local government;

18 (b) Delivery by the private partner of maintenance bonds, performance and
 19 payment bonds, warranties, guarantees, and optional letters of credit in
 20 connection with its activities under the agreement, in the forms and
 21 amounts satisfactory to the local government and in amounts necessary to
 22 provide adequate protection to the local government;

23 (c) Review and approval of plans and specifications for the project by the local
 24 government;

25 (d) Inspection of the project by the local government to ensure that the private
 26 partner's actions are acceptable to the local government in accordance with
 27 the agreement;

- 1 (e) Maintenance of public liability insurance or self-insurance, in form and
2 amount satisfactory to the local government and reasonably sufficient to
3 insure coverage of tort liability to the public and employees and to enable
4 the continued operation of the project;
- 5 (f) Reimbursement to be paid to the local government for services provided by
6 the local government;
- 7 (g) Filing of appropriate financial statements by the private partner on a
8 periodic basis;
- 9 (h) Policies and procedures governing the rights and responsibilities of the
10 local government and the private partner in the event the public-private
11 partnership agreement is terminated or there is a material default by the
12 private partner. These policies and procedures shall include conditions
13 governing assumption of the duties and responsibilities of the private
14 partner by the local government, and the transfer or purchase of property or
15 other interests of the private partner by the local government;
- 16 (i) Any fees or payments as may be established by agreement of the private
17 partner and the local government;
- 18 (j) A detailed description of all duties and requirements of the private partner;
- 19 (k) The proposed use of Kentucky-based subcontractors, design services,
20 architects, engineering services, employees, and financial services if such
21 contractors and service providers are available and have the necessary
22 experience and expertise required for the completion of the project at a
23 competitive cost; and
- 24 (l) Any other information necessary to properly address the life cycle of the
25 agreement, including the disposition of assets if or when the public-private
26 partnership agreement is terminated or otherwise concludes.
- 27 (6) On or before January 1, 2015, the secretary of the Finance and Administration

Cabinet shall promulgate administrative regulations setting forth criteria to be used by a local government in determining when a public-private partnership is to be used for a particular project, and establishing a process for public-private partnership procurement undertaken by local governments. This process shall be parallel to the process established for public-private partnership procurement undertaken by the Commonwealth pursuant to Section 3 of this Act, to the extent practicable. The secretary shall consult with design-builders, construction managers, contractors, design professionals including engineers and architects, local governments, public entities as defined in KRS 65.310, the Associated General Contractors of Kentucky, the Kentucky Chamber of Commerce, the Kentucky Bankers Association, the Kentucky School Boards Association, and other appropriate professionals during the development of these administrative regulations. A reasonable fee may be imposed on the private partner by this administrative regulation for the review required in subsection (11) of this section. If the cabinet fails to promulgate administrative regulations pursuant to this subsection, local governments may act pursuant to this section in the absence of administrative regulations, including compliance with the process outlined in subsection (11) of this section.

(7) A request for proposal for a local government project utilizing a public-private partnership shall include at a minimum:

- (a) The parameters of the proposed public-private partnership agreement;
- (b) The duties and responsibilities to be performed by the private partner or partners;
- (c) The methods of oversight to be employed by the local government;
- (d) The duties and responsibilities that are to be performed by the local government and any other partners to the contract;
- (e) The evaluation factors and the relative weight of each to be used in the

1 scoring of awards; and

2 (f) Other information required by a local government to evaluate the proposals
 3 submitted by respondents and the overall proposed public-private
 4 partnership.

5 (8) A private entity desiring to be a private partner shall demonstrate to the
 6 satisfaction of the local government that it is capable of performing any duty,
 7 responsibility, or function it may be authorized or directed to perform as part of
 8 the public-private partnership agreement.

9 (9) When a request for proposal for a project utilizing a public-private partnership is
 10 issued, the local government shall transmit a copy of the request for proposal to
 11 the Department for Local Government and to the cabinet.

12 (10) A request for proposal or other solicitation may be canceled, or all proposals may
 13 be rejected, if it is determined in writing that such action is taken in the best
 14 interest of the local government and approved by the legislative body.

15 (11) Upon initial issuance of a public-private partnership agreement, the local
 16 government shall submit the agreement to the cabinet for evaluation thereof. The
 17 cabinet shall evaluate the agreement to determine if the agreement and the
 18 project are economically viable within the scope of available or proposed
 19 financing arrangements and expected revenues, and that the procurement
 20 satisfies the requirements of this section. The local government shall submit any
 21 information requested by the cabinet, relating to the agreement and its
 22 procurement, to enable the cabinet to conduct this evaluation. The cabinet shall
 23 either approve or disapprove the agreement within sixty (60) days of receipt of the
 24 contract by the cabinet and return it to the local government legislative body for
 25 final ratification. No public-private partnership agreement issued by a local
 26 government shall take effect unless and until it is approval by the cabinet
 27 pursuant to this subsection and is found by the cabinet to meet the requirements

of this section and to be economically viable as provided in this subsection. If an agreement is not approved by the cabinet and found by the cabinet to not meet the requirements of this section or is determined not to be economically viable, the local government submitting the agreement may modify the agreement and resubmit it to the cabinet for reconsideration. The cabinet shall respond to the local government within sixty (60) days of receipt of the amended proposal.

(12) The Commonwealth shall bear no liability for public-private partnership agreements approved by the cabinet pursuant to subsection (11) of this section.

(13) Upon approval by the cabinet and execution of a public-private partnership agreement, the local government shall transmit a copy of the agreement to the Department for Local Government.

(14) The Auditor of Public Accounts may periodically review public-private partnership agreements executed by a local government pursuant to this section, and any actions undertaken by private partners and local governments thereunder, to evaluate compliance with the agreement and this section.

(15) Multiple local governments, acting in accordance with KRS 65.210 to 65.300, may jointly enter into a public-private partnership pursuant to this section.

➔Section 6. KRS 175B.005 is amended to read as follows:

(1) The purpose of this chapter is to establish a structure for the construction, operation, financing, and oversight of significant transportation projects within the Commonwealth and between the Commonwealth and ~~any~~~~[the]~~ state adjoining the Commonwealth~~[of Indiana]~~. To accomplish this purpose, the Kentucky Public Transportation Infrastructure Authority is established by KRS 175B.015 to review, approve, and monitor all projects eligible for construction and financing under this chapter and, if necessary, to assist with the operation, financing, and management of projects.

(2) All projects approved by the Kentucky Public Transportation Infrastructure

Authority may be operated,~~[shall be]~~ managed, constructed, and financed entirely or in part only by:

(a) A bi-state authority as provided in KRS 175B.030;~~[or]~~

(b) A project authority as provided in KRS 175B.035;

(c) A public-private partnership as provided in Sections 9 and 10 of this Act; or

(d) A state authority as provided in Sections 8, 9, and 10 of this Act.

➔Section 7. KRS 175B.010 is amended to read as follows:

As used in this chapter:

(1) "Authority" means the state authority, or a bi-state authority, or a project authority, unless the specific use requires that it apply only to the state authority, or a bi-state authority, or a project authority;

(2) "Bi-state authority" means an authority created under KRS 175B.030;

(3) "Cabinet" means the Transportation Cabinet;

(4) "Commonwealth" means the Commonwealth of Kentucky;

(5) "Cost" means:

(a) The cost of construction of the project, including the acquisition of land, rights-of-way, property, rights in land, easements, and interests acquired by the authority for construction of a project;

(b) The cost of preparing land or property, including demolishing or removing any buildings or structures, and the cost of acquiring any lands to which those buildings or structures may be moved;

(c) The pro-rata value of all machinery and equipment used in construction of the project;

(d) Financing charges and provisions for working capital in an amount the authority determines to be reasonable;

(e) Interest prior to and during construction and, if approved by the authority, for a period up to two (2) years after completion of construction;

(f) The cost of traffic estimates and of engineering, financial and legal services, plans, specifications, surveys, estimates of cost and revenues, or other expenses necessary or incidental to determining the feasibility or practicability of constructing any project;

(g) The cost and expense of the relocation or removal of public utilities impacted by a project, including the cost of installing the facilities in a new location, the cost of any lands or any rights or interests in lands, and the cost of any other rights acquired to accomplish the relocation or removal;

(h) Administrative expenses and any other expenses that are necessary for or incidental to the construction of a project, the financing of the construction, and the placing of the project in operation; and

(i) The cost of maintenance of the completed project.

Any obligation or expense incurred by and reimbursed to the Commonwealth in connection with any of the items of cost set out in this subsection may be regarded as a part of that cost;

(6) "Department" means the Department of Highways;

(7) "Developing authority" means the authority involved in the development of a project;

(8) "Issuing authority" means the authority that will issue or has issued debt associated with a project;

(9) "Local government" means a consolidated local government, an urban-county government, a charter county government, a unified local government, or a county;

(10) "Private partner" means any entity that is a partner in a public-private partnership other than:

(a) The Commonwealth of Kentucky;

(b) Any political subdivision of the Commonwealth;

(c) The federal government;

1 (d) Any other state government;

2 (e) Any agency of a state, federal, or local government; or

3 (f) An authority;

4 (11) (a) "Project" means:

5 1. Any highway or section of a highway designated as part of, or built to
6 the standards of, the federal interstate highway system and that would
7 be designated a major project by the Federal Highway Administration;

8 or

9 2. Any fully or partially controlled highway or section of a fully or
10 partially controlled highway not designated as part of, or built to the
11 standards of, the federal interstate highway system; that exceeds one
12 hundred million dollars (\$100,000,000) in total cost

13 [~~that would be designated a mega project by the Federal Highway~~
14 ~~Administration~~];

15 (b) "Project" includes all bridges, tollhouses, garages, and other buildings and
16 facilities which the authority deems necessary for the operation of the project,
17 together with all property, rights, easements, and interests which may be
18 acquired by the authority or by the Commonwealth for the construction and
19 operation of a project;

20 ~~(12)~~~~(11)~~ "Project authority" means an authority created pursuant to KRS 175B.035;

21 ~~(13)~~~~(12)~~ "Project revenue bonds" means revenue funding bonds, revenue refunding
22 bonds, notes, or other financial obligations issued under this chapter by the issuing
23 authority;

24 ~~(14)~~~~(13)~~ "Public-private partnership" means an entity operating pursuant to a
25 written public-private partnership agreement, and composed of:

26 (a) An authority or authorities;

27 (b) At least one (1) private partner;

1 (c) The cabinet, if necessary; and

2 (d) An adjoining state, if necessary, if the public-private partnership is
 3 financing a project that is between the Commonwealth and an adjoining
 4 state;

5 (15) "Public utility facilities" means tracks, pipes, mains, conduits, cables, wires, towers,
 6 poles, and other equipment and appliances of any public utility in, on, along, over,
 7 or under any project; and

8 (16){(14)} "State authority" means the Kentucky Public Transportation Infrastructure
 9 Authority created under KRS 175B.015.

10 ➔Section 8. KRS 175B.020 is amended to read as follows:

11 (1) The state authority's primary purpose shall be to facilitate the construction,
 12 financing, operation, and oversight of projects by entering into bi-state agreements
 13 and by creating bi-state authorities,~~{and}~~ project authorities, and public-private
 14 partnerships. To accomplish these purposes, the state authority shall have the
 15 power and duty to:

16 (a) Take the following actions relating to a bi-state authority authorized pursuant
 17 to KRS 175B.030:

- 18 1. To enter into a bi-state agreement;
- 19 2. To review and approve project financing plans and development
- 20 agreements; and
- 21 3. To monitor agreements entered into by bi-state authorities;~~{and}~~

22 (b) Take the following actions relating to a project authority authorized pursuant
 23 to KRS 175B.035:

- 24 1. To request establishment of a project authority;
- 25 2. To review and approve project financing plans and development
- 26 agreements;
- 27 3. To monitor activities of project authorities; and

- 1 4. To enter into an agreement with the project authority; and
- 2 (c) Take the following actions relating to a public-private partnership
- 3 authorized pursuant to Section 10 of this Act:
- 4 1. To request establishment of a public-private partnership;
- 5 2. To review and approve project financing plans;
- 6 3. To monitor activities of public-private partnerships; and
- 7 4. To enter into an agreement as a part of or with a public-private
- 8 partnership, if necessary.
- 9 (2) The state authority, when authorized pursuant to subsection (4) of this section, may
- 10 participate as a developing or issuing authority, or both, in the development,
- 11 construction, or financing of a project by a bi-state or project authority, or by a
- 12 public-private partnership, if necessary. If the state authority participates as a
- 13 developing or issuing authority, the state authority shall have the powers and duties
- 14 established in KRS 175B.025 as they apply to that project.
- 15 (3) The state authority, as a function of its oversight of any other authority created
- 16 pursuant to this chapter, shall report before the first issuance of bonds and no less
- 17 than semiannually thereafter to the Capital Projects and Bond Oversight Committee
- 18 and to the Interim Joint Committee on Appropriations and Revenue of the
- 19 Legislative Research Commission, on any projects currently proposed or under
- 20 development by each authority. Current and proposed levels of bonding for each
- 21 project shall be reviewed by the Capital Projects and Bond Oversight Committee in
- 22 accordance with KRS 45.794 before the bonds shall be issued.
- 23 (4) (a) Notwithstanding any other provision of this chapter, the following actions
- 24 shall not take effect until ratified by the General Assembly:
- 25 1. The creation of a bi-state authority;
- 26 2. The creation of a project authority;
- 27 3. The creation of a public-private partnership;

1 4. The modification or amendment of the scope of any project; and
 2 5.[4.] The development of any project undertaken entirely by the state
 3 authority.

4 (b) If any action described in paragraph (a) of this subsection is not ratified by the
 5 General Assembly, the creation, approval, or modification shall be considered
 6 void.

7 ➔ Section 9. KRS 175B.030 is amended to read as follows:

- 8 (1) (a) 1. This section shall apply to any project that connects Kentucky with
 9 ~~any[the]~~ state that adjoins the Commonwealth~~[of Indiana]~~. A proposal
 10 to construct a project that connects Kentucky with an adjoining~~[the]~~
 11 ~~state[of Indiana]~~ shall be contained in a financing plan prepared
 12 pursuant to subsection (6) of this section. If approved, the project shall
 13 be constructed under the supervision of the state authority, a bi-state
 14 authority, or both, and may be financed by the state authority, a bi-state
 15 authority, a public-private partnership, or any combination of these.
- 16 2. If the state authority, operating pursuant to Section 8 of this Act,
 17 participates in any capacity in the construction or financing of a
 18 project that connects Kentucky with an adjoining state, the state
 19 authority may assume all or part of the role of the bi-state authority
 20 relative to that project.
- 21 3. A state authority proposing a project pursuant to this chapter shall, to
 22 the extent practical, consult with the officials representing the units of
 23 local government in which the proposed project is to be located in
 24 order to obtain the advice and input on the local impact of the
 25 proposed project, including information regarding land use planning,
 26 transportation planning, economic development, and any other factors
 27 having a direct impact to the local community.

1 (b) Subsections (2) to (4) of this section shall only apply to a bi-state authority.

2 (c) Subsections (1) and (5) to (8) of this section shall apply to both a bi-state
 3 authority and a public-private partnership.

4 (2) (a) A local government that contains a portion of a proposed project may, by
 5 resolution of its governing body, request that its chief executive officer and
 6 the Governor appoint a group of Kentucky members to negotiate with a
 7 similar group from an adjoining~~the~~ state~~of Indiana~~ for the purpose of
 8 proposing the creation of a bi-state authority composed of members from both
 9 states, recognized under the laws of both states, and existing for the purpose
 10 of financing, constructing, and operating a project or projects mutually
 11 beneficial to both states.

12 (b) If established, the Kentucky membership of the bi-state authority shall consist
 13 of seven (7) members, three (3) of whom shall be appointed by the Governor,
 14 and four (4) of whom shall be appointed by the chief executive of the local
 15 government in which the project is located. The four (4) local government
 16 appointees shall be residents of the county in which the project is located. If a
 17 project is located in a consolidated local government, no more than two (2)
 18 appointees shall reside in the same Kentucky senatorial district. If portions of
 19 the project are located in more than one (1) local government, the chief
 20 executive of the county or consolidated local government having the largest
 21 population shall make the appointments authorized in this paragraph.

22 (c) Any proposed agreement to establish a bi-state authority shall be presented to
 23 the state authority for approval. If the state authority approves the agreement,
 24 it shall be submitted to the General Assembly for ratification. If the agreement
 25 is ratified by the General Assembly, the state authority shall authorize the
 26 establishment of a bi-state authority and shall enter into an agreement with the
 27 adjoining state~~of Indiana~~ for the creation of a bi-state authority.

- 1 (3) (a) Kentucky members of a proposed bi-state authority who are appointed by the
 2 Governor shall be confirmed by the Senate in accordance with KRS 11.160.
 3 Members appointed by the chief executive of the local government shall be
 4 confirmed by the governing body of the local government.
- 5 (b) At least two (2) of the Governor's appointees and two (2) of the chief
 6 executive's appointees shall be familiar with road and bridge design or
 7 financing and administration of transportation infrastructure projects.
- 8 (c) Members of a bi-state authority appointed by the Governor shall serve for four
 9 (4) years, except that initial appointments shall be as follows:
- 10 1. One (1) appointee shall serve a term of two (2) years;
 11 2. One (1) appointee shall serve a term of three (3) years; and
 12 3. One (1) appointee shall serve a term of four (4) years.
- 13 (d) The governing body of the local government requesting formation of the bi-
 14 state authority shall, by resolution, establish term lengths for the initial and
 15 succeeding members who are locally appointed, with each term not to exceed
 16 four (4) years.
- 17 (e) Members of a bi-state authority representing the Commonwealth may be
 18 reappointed upon the expiration of their terms. Members reappointed shall be
 19 reconfirmed in the same manner as newly appointed members.
- 20 (4) (a) An agreement establishing a bi-state authority shall at a minimum:
- 21 1. Establish the total number of members of the bi-state authority;
 22 2. Establish staffing and funding to support the work of the bi-state
 23 authority;
 24 3. Designate the process for selecting a presiding officer of the bi-state
 25 authority, which shall include a requirement that a member from each
 26 state share the duties of presiding; and
 27 4. Require the approval of a majority of the members from each state

1 before any action may be taken or any change may be made by the bi-
 2 state authority.

3 (b) A bi-state authority created pursuant to this section shall take the legal form
 4 necessary to conform to the laws of both states. The Commonwealth shall
 5 consider the bi-state authority to be an independent de jure municipal
 6 corporation, constituting a governmental agency and instrumentality of the
 7 appropriate jurisdictions. The bi-state authority shall adopt a name indicative
 8 of its location and purpose.

9 (c) Any bi-state agreement approved pursuant to this section may be presented to
 10 the United States Congress for consent thereof by joint resolution as provided
 11 in Article 1, Section 10, Clause 3 of the United States Constitution.

12 (5) (a) Members of a bi-state authority appointed from the Commonwealth shall be
 13 considered public servants subject to KRS Chapter 11A.

14 (b) Members of a bi-state authority appointed from the Commonwealth shall
 15 receive no compensation for their services, but shall be entitled to
 16 reimbursement for all reasonable expenses necessary and incidental to the
 17 performance of their duties and functions as members of the bi-state authority.

18 (c) The following individuals or entities shall be prohibited from entering into
 19 any contract or agreement with a bi-state authority or a public-private
 20 partnership:

21 1. Any member of the bi-state authority appointed to represent the
 22 Commonwealth or any member of the state authority, ~~or~~ a project
 23 authority, or a public-private partnership;

24 2. Any spouse, child, stepchild, parent, stepparent, or sibling of a member
 25 of the bi-state authority appointed to represent the Commonwealth or
 26 any spouse, child, stepchild, parent, stepparent, or sibling of a member
 27 of the state authority, ~~or~~ a project authority, or a public-private

1 partnership; and

2 3. Any corporation, limited liability entity, or other business entity of
3 which a person identified in subparagraph 1. or 2. of this paragraph is an
4 owner, member, or partner or has any other ownership interest.

5 (d) A bi-state authority or public-private partnership shall comply with the
6 procurement laws of both states that are a party to the agreement creating the
7 bi-state authority or public-private partnership, including the provisions of
8 KRS Chapter 45A, in the development of a project and the procurement of
9 goods and services.

10 (e) A bi-state authority or public-private partnership shall comply with the laws
11 of both states concerning the inspection and disclosure of public records,
12 including KRS 61.870 to 61.884.

13 (f) A bi-state authority or public-private partnership shall comply with the laws
14 of both states concerning the conduct of open meetings, including KRS
15 61.805 to 61.850.

16 (6) (a) ~~[After creation of the bi-state authority and]~~Prior to the execution of any
17 agreements for the construction of the project, the state authority, the bi-state
18 authority, a public-private partnership, or any combination of these, if
19 appropriate, shall prepare a financial plan specifying the construction and
20 financing parameters of the project, including:

21 1.{(a)} A timeline for construction of the project, including financing
22 requirements throughout the construction of the project;

23 2.{(b)} The amount and duration of per-vehicle tolls;

24 3.{(c)} Expected appropriations from the General Assembly to be used for
25 project costs; however, no financial plan shall be submitted or approved
26 which contains expected appropriations by the General Assembly
27 beyond those appropriated in the most recently enacted biennial highway

1 construction plan;

2 ~~4.{(d)}~~ Other sources of funds and expected amounts; and

3 ~~5.{(e)}~~ Other provisions relating to the construction and financing of the
4 project.

5 (b) 1. If the financial plan is prepared by a bi-state authority, the
6 Kentucky members of the bi-state authority shall consult with the
7 involved local governments in Kentucky, the department, and the
8 Finance and Administration Cabinet, Office of Financial Management,
9 during the development of the financial plan. Upon completion and
10 approval of the financial plan by the bi-state authority, the plan shall be
11 submitted to the state authority for approval.

12 2. If the financial plan is prepared by the state authority, the state
13 authority shall consult with the involved local governments in
14 Kentucky, the department, and the Finance and Administration
15 Cabinet, Office of Financial Management, during the development of
16 the financial plan. If the financial plan is viable based on all
17 information available to the state authority, the state authority shall
18 recommend the plan.

19 3. If the financial plan is prepared by a public-private partnership, the
20 public-private partnership shall consult with the involved local
21 governments in Kentucky, the department, and the Finance and
22 Administration Cabinet, Office of Financial Management, during the
23 development of the financial plan. Upon completion and approval of
24 the financial plan by the public-private partnership, the plan shall be
25 submitted to the state authority for approval.

26 (c) The state authority shall not approve or recommend a financial plan which
27 contains expected appropriations by the General Assembly beyond those

appropriated in the most recently enacted biennial highway construction plan. If the financial plan is approved or recommended by the state authority, the cabinet and, as necessary, other state agencies or local governments may enter into a development agreement as provided in subsection (7) of this section with all necessary parties for the development of a project.

(d) Every financial plan prepared pursuant to this section shall include an evaluation of the ability of a potential contractor or service provider to quickly respond to the needs presented in a major transportation project, and the importance of economic development opportunities represented by the construction of any project under this chapter. In evaluating proposals, preference shall be given to a plan that includes the involvement of small businesses as subcontractors, to the extent that small businesses can provide services in a competitive manner, unless any preference interferes with the qualification for federal funds.

(7) (a) Upon approval or recommendation of the financial plan as provided in subsection (6) of this section, a development agreement may be entered into establishing the terms and conditions under which a project will be undertaken and the duties, responsibilities, powers, and authorities of the parties to the agreement. The development agreement shall, at a minimum:

1. Require the bi-state authority or public-private partnership to submit an annual report to the cabinet and the Legislative Research Commission;
2. Require that an annual audit of the bi-state authority or public-private partnership be performed by a certified public accountant;
3. Include the relevant provisions from the financial plan required by subsection (6) of this section;
4. Include provisions detailing the duties, responsibilities, and obligations of each party in relation to the financing, development, operation, and

1 maintenance of the project, and the servicing and retirement of all
2 bonds;

3 5. Establish limits on any reserve funds created for operation, maintenance,
4 or bond servicing, which shall be at a level to adequately operate and
5 maintain the project and ensure proper bond servicing;

6 6. Prohibit the amendment of the project or the financial plan without the
7 prior evaluation and approval by the state authority. No amendment shall
8 be approved that provides for expected appropriations by the General
9 Assembly beyond those appropriated in the most recently enacted
10 biennial highway construction plan;

11 7. If applicable, establish a process for the transfer of ownership of the
12 portion of the project that is within the Commonwealth to the
13 Commonwealth upon retirement of all bonds associated with the project
14 or, if the project utilizes a public-private partnership, upon
15 termination of that partnership; and

16 8. a. For a bi-state authority, require the approval of a majority of the
17 members from each state before any action may be taken or any
18 changes may be made by the bi-state authority.

19 b. For a public-private partnership, require approval of the cabinet
20 before any action may be taken or any changes may be made by
21 the public-private partnership.

22 (b) The parties to the agreement from the Commonwealth shall consult with the
23 department and the Finance and Administration Cabinet, Office of Financial
24 Management, in the development of the agreement.

25 (c) Additional agreements may be executed, as necessary to complete the project.

26 (d) The development agreement may take the form of a public-private
27 partnership agreement.

1 (8) The General Assembly hereby finds and declares that in carrying out the functions,
 2 powers, and duties as prescribed in this chapter, a bi-state authority or public-
 3 private partnership authorized under this section will be performing essential
 4 public and government functions that improve the public welfare and prosperity of
 5 the people of the Commonwealth by promoting the availability of and enhancing
 6 accessibility to improved transportation services within the Commonwealth.

7 (9) A public-private partnership involving a bi-state authority with the state of Ohio
 8 shall not be utilized without ratification of the General Assembly.

9 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 175B IS CREATED
 10 TO READ AS FOLLOWS:

11 (1) The state authority, a bi-state authority, or a project authority may, with approval
 12 of the General Assembly pursuant to subsection (4) of Section 8 of this Act,
 13 utilize a public-private partnership.

14 (2) An authority utilizing a public-private partnership shall continue to be
 15 responsible for oversight of any function authorized by this chapter that is
 16 delegated to or otherwise performed by a public-private partnership.

17 (3) A public-private partnership shall not be used to circumvent any requirements or
 18 restrictions placed upon any authority pursuant to this chapter.

19 (4) An authority proposing to utilize a public-private partnership shall include in the
 20 financial plan required by Section 9 or 12 of this Act:

21 (a) The parameters of the public-private partnership agreement;

22 (b) The duties and responsibilities to be performed by the private partner or
 23 partners;

24 (c) The methods of oversight to be employed by the authority;

25 (d) The duties and responsibilities of the project that are to be performed by the
 26 authority, the cabinet, and any other partners to the agreement; and

27 (e) Other information required by the state authority or the cabinet to evaluate

1 the financial plan and the proposed public-private partnership.

2 (5) A private entity desiring to be a private partner shall demonstrate to the
 3 satisfaction of the state authority and the cabinet that it is capable of performing
 4 any function to be authorized by the public-private partnership.

5 (6) A public-private partnership authorized or utilized pursuant to this section shall
 6 be subject to subsections (5) to (8) of Section 9 of this Act.

7 (7) The cabinet shall promulgate administrative regulations detailing the
 8 procurement approach and proposal review process to be used for a public-
 9 private partnership by December 31, 2014.

10 ➔ Section 11. KRS 175B.040 is amended to read as follows:

11 (1) If imposed as part of the financing plan, tolls shall be fixed and adjusted by the
 12 developing authority to provide a fund sufficient with other revenues, if any, to:

13 (a) Pay the cost of maintaining, repairing, and operating the project, unless the
 14 cost or any part thereof is being paid by the Commonwealth as authorized by
 15 this chapter;

16 (b) Pay the principal of and interest on the project revenue bonds; and

17 (c) Create reserves not to exceed amounts specified in the development
 18 agreement.

19 (2) Unless a transfer of ownership of a project occurs pursuant to KRS 175B.095 or the
 20 project utilizes a public-private partnership pursuant to Sections 9 and 10 of this
 21 Act, the developing authority shall at all times maintain ownership and control of all
 22 tolls and other revenues generated by the project. Tolls shall not be subject to
 23 supervision or regulation by any other department, division, authority, board,
 24 bureau, or agency of a local government or the Commonwealth.

25 (3) (a) The tolls and all other revenues derived from the project, except those
 26 revenues necessary to:

27 I. Pay the cost of maintenance, repair, and operation; ~~and to~~

1 2. Establish and maintain reserves as may be provided for in the
 2 authorization of the issuance of the project revenue bonds or in the trust
 3 indenture securing the project revenue bonds; or

4 3. Satisfy the requirements of a public-private partnership agreement or
 5 a development agreement;[;]

6 shall be set aside in a sinking fund which shall be pledged to, and charged
 7 with, the payment of principal and interest on the project revenue bonds as
 8 they become due, and the redemption price or the purchase price of project
 9 revenue bonds retired by call or purchase as provided in the authorization of
 10 issuance.

11 (b) The pledge of the sinking fund shall be valid and binding from the time when
 12 the pledge is made.

13 (c) The tolls or other revenues received and pledged by the developing authority
 14 shall immediately be subject to the lien of the pledge without any physical
 15 delivery or further action, and the lien on any pledge shall be valid and
 16 binding against all parties having claims of any kind in tort, contract, or
 17 otherwise against the developing authority, whether the parties have received
 18 notice or not.

19 (d) Neither the proceedings nor any trust indenture by which a pledge is created
 20 need be filed or recorded, except in the records of the issuing authority.

21 (e) The use and disposition of moneys to the credit of the sinking fund shall be
 22 subject to the provisions of the proceedings authorizing the issuance of the
 23 project revenue bonds or the trust indenture.

24 (4) (a) Every person utilizing a project developed and tolled under this chapter shall
 25 pay the appropriate toll.

26 (b) Any person who violates the provisions of this subsection shall be subject to
 27 the provisions of administrative regulations promulgated pursuant to KRS

1 175B.015(12).

2 (5) Upon receiving notice, the cabinet shall suspend or withhold the annual registration
3 of a vehicle used in the commission of a toll violation until:

4 (a) The fine, charge, or assessment has been paid; or

5 (b) The violation of subsection (4) of this section has been determined not to have
6 occurred.

7 (6) (a) Toll collection customer account information shall be confidential and not
8 subject to disclosure under KRS 61.870 to 61.884. Contracts relating to toll
9 collection for a project developed and tolled under this chapter shall ensure
10 the confidentiality of all toll collection customer account information.

11 (b) For the purposes of this section, "toll collection customer account
12 information" means any information collected or received from or about any
13 person who is assessed a toll, including contact information, payment
14 information, trip data, and any other relevant data.

15 ➔Section 12. KRS 175B.035 is amended to read as follows:

16 (1) Potential projects that are within Kentucky may be developed by a project authority
17 as provided in this section, or by a public-private partnership as provided in
18 Section 10 of this Act.

19 (2) A local government that contains a portion of a proposed project may, by resolution
20 of its governing body, request the state authority to evaluate the establishment of a
21 project authority or a public-private partnership for the purpose of developing a
22 project.

23 (3) The state authority may request that the department evaluate the proposed project by
24 preparation of a financial plan evaluating all aspects of the proposed project,
25 including:

26 (a) The most effective location for the project;

27 (b) The impact on local governments and citizens at the location of or along the

1 path of the project;

2 (c) A detailed analysis of the proposed cost of the project;

3 (d) The potential economic impact to the areas affected by the project;

4 (e) The anticipated level of use of the project;

5 (f) The amount and duration of per-vehicle tolls;

6 (g) Expected appropriations from the General Assembly to be used for the
7 project; however, no financial plan shall be submitted or approved which
8 contains expected appropriations by the General Assembly beyond those
9 appropriated in the most recently enacted biennial highway construction plan;

10 (h) The ability of a potential contractor or service provider to quickly respond to
11 the needs presented in a major transportation project, and the importance of
12 economic development opportunities represented by the construction of any
13 project under this chapter. In evaluating proposals, preference shall be
14 given to a plan that includes the involvement of small businesses as
15 subcontractors, to the extent that small businesses can provide services in a
16 competitive manner, unless any preference interferes with the qualification
17 for federal funds;

18 (i) Other sources of funds and expected amounts; and

19 ~~(j)(i)~~ Any other provisions relating to the construction and financing of the
20 project.

21 (4) If, based on the project evaluation prepared pursuant to subsection (3) of this
22 section, the state authority and the department determine that the development of
23 the project is economically feasible, the state authority shall submit the proposal to
24 the General Assembly for ratification. If ratified by the General Assembly, the state
25 authority may request that the Governor establish a project authority in accordance
26 with the following:

27 (a) The project authority shall be established as an independent de jure municipal

- 1 corporation and political subdivision of the Commonwealth constituting a
2 governmental agency and instrumentality of the Commonwealth, with the
3 power to contract and be contracted with, acquire and convey property, sue
4 and be sued, and exercise all of the usual powers of corporations not
5 inconsistent with the authority's specifically enumerated purpose and duties;
- 6 (b) The project authority shall adopt a name that includes the name of the project
7 and the words "Project Authority";
- 8 (c) The project authority shall be composed of seven (7) members, three (3) of
9 whom shall be appointed by the Governor and confirmed by the Senate in
10 accordance with KRS 11.160, and four (4) of whom shall be appointed by the
11 chief executive of the local government that requested establishment of the
12 project authority and confirmed by resolution of the local government's
13 governing body;
- 14 (d) Each member of the project authority shall be appointed for a period of four
15 (4) years, except that in making initial appointments, the Governor shall
16 appoint members for one (1), three (3), and four (4) years, and the chief
17 executive shall appoint two (2) members each for two (2) and four (4) years;
18 and
- 19 (e) At least one (1) of the Governor's appointees and two (2) of the chief
20 executive's appointees shall be familiar with road and bridge design or
21 financing and administration of transportation infrastructure projects.
- 22 (5) (a) Within ninety (90) days of its establishment under subsection (4) of this
23 section, the project authority shall convene and organize. The project authority
24 shall elect a chair and a vice chair, who shall be members of the project
25 authority and elected by a majority of the project authority members. The
26 project authority shall appoint a secretary and a treasurer who shall not be
27 members of the project authority, each of whom shall serve at the pleasure of

1 the project authority and shall receive compensation as determined and paid
2 by the project authority.

3 (b) The treasurer shall give bond in an amount prescribed by the project authority
4 to the project authority and the state conditioned upon a faithful accounting
5 for all the funds coming into the treasurer's custody, with corporate surety
6 given by a surety company qualified to do business in the state, the premium
7 of which shall be paid by the project authority.

8 (c) The project authority shall maintain an office, and the secretary of the project
9 authority shall maintain in that office complete records of all the project
10 authority's actions and proceedings, which shall be considered open records
11 under KRS 61.870 to 61.884.

12 (d) A project authority shall comply with the applicable provisions of KRS
13 Chapter 45A in the development of a project and the procurement of goods
14 and services.

15 (e) The meetings of a project authority shall be considered open meetings
16 pursuant to KRS 61.805 to 61.850.

17 (6) A majority of the members of a project authority shall constitute a quorum for the
18 transaction of business. The members of a project authority shall receive no
19 compensation for their services in that capacity, but shall be entitled to
20 reimbursement for all reasonable expenses necessarily incurred in connection with
21 performance of their duties and functions as members.

22 (7) (a) Members of a project authority shall be considered public servants subject to
23 the provisions of KRS Chapter 11A.

24 (b) The following individuals or entities shall be prohibited from entering into
25 any contract or agreement with a project authority or a public-private
26 partnership:

27 1. Any member of a project authority, a bi-state authority, ~~or~~ the state

- 1 authority, or a public-private partnership;
- 2 2. Any spouse, child, stepchild, parent, stepparent, or sibling of a member
- 3 of a project authority, a bi-state authority, ~~{ or }~~ the state authority, or a
- 4 public-private partnership; and
- 5 3. Any corporation, limited liability entity, or other business entity of
- 6 which a person identified in subparagraph 1. or 2. of this paragraph is an
- 7 owner, a member, a partner, or has any other ownership interest.
- 8 (8) (a) The state authority shall enter into a development agreement with a project
- 9 authority or a public-private partnership to establish the terms and conditions
- 10 under which a project will be undertaken. No financial plan shall be submitted
- 11 or approved which contains expected appropriations by the General Assembly
- 12 beyond those appropriated in the most recently enacted biennial highway
- 13 construction plan.
- 14 (b) The development agreement shall establish the duties, responsibilities, and
- 15 powers of the state authority, the project authority, a public-private
- 16 partnership, and, as necessary, the cabinet with regard to the project.
- 17 (c) The development agreement shall include, at a minimum, all information
- 18 necessary relating to the creation, development, operation, and disposal of the
- 19 project. No financial plan shall be submitted or approved which contains
- 20 expected appropriations by the General Assembly beyond those appropriated
- 21 in the most recently enacted biennial highway construction plan.
- 22 (d) After the proposed project has been approved and set forth in the development
- 23 agreement, it shall not be changed or expanded without evaluation and
- 24 approval by the state authority and ratification by the General Assembly.
- 25 (e) Additional agreements may be executed, as necessary, between the state
- 26 authority, the project authority, a public-private partnership, the department,
- 27 and the cabinet.

1 (9) The provisions of this chapter relating to the duties, responsibilities, powers, and
 2 authorities of the state authority shall apply to a project authority or a public-private
 3 partnership to the extent that the duties, responsibilities, powers, and authorities are
 4 required for the project authority or public-private partnership to carry out its
 5 duties and responsibilities under a development agreement.

6 (10) Upon retirement of all bonds associated with a project developed under this section
 7 or, if the project utilizes a public-private partnership, upon termination of that
 8 partnership, the ownership of the project shall be transferred to the Commonwealth
 9 pursuant to KRS 175B.095.

10 ➔ Section 13. KRS 175B.095 is amended to read as follows:

11 (1) Not more than one (1) year prior to the scheduled retirement of all bonds issued to
 12 finance a project, the department shall undertake an evaluation of the condition of
 13 the project to determine if the project has significant maintenance, reconstruction,
 14 or rebuilding needs. The evaluation shall be completed no less than one hundred
 15 eighty (180) days prior to the scheduled retirement of the bonds.

16 (2) If significant maintenance, reconstruction, or rebuilding is needed, the department
 17 shall determine if funds and reserves held by the developing authority for the
 18 project are adequate to accomplish the maintenance, reconstruction, or rebuilding. If
 19 additional funds are needed, additional bonds shall be authorized and issued by the
 20 same entity that issued the original bonds for the project, pursuant to this chapter.

21 (3) Tolls for the project shall continue until all bonds are retired.

22 (4) Notwithstanding any other provisions of this chapter, any portion of a project
 23 located within the Commonwealth and financed by an authority shall become the
 24 property of the Commonwealth upon the retirement of all bonds issued to finance
 25 the project or, if the project utilizes a public-private partnership, upon
 26 termination of that partnership.

27 (5) Upon the transfer of any project to the Commonwealth pursuant to this section, the

1 department shall evaluate the need for the continuance of any tolls. Tolls may be
 2 continued if significant rebuilding, expansion, or maintenance is needed. Tolls
 3 collected after ownership of a project has transferred to the Commonwealth shall be
 4 deposited into the road fund and used for current and future costs of the project,
 5 including maintenance, expansion, rebuilding, reconstruction, or other similar
 6 purposes.

- 7 (6) When an authority has transferred a project to the Commonwealth pursuant to this
 8 section, remaining fund reserves relating to that project shall be transferred to the
 9 road fund.

10 ➔Section 14. KRS 175B.025 is amended to read as follows:

- 11 (1) The developing authority and issuing authority may be the same authority or
 12 separate authorities, depending on the needs of the project. The developing
 13 authority and issuing authority shall have the following powers and duties, as
 14 necessary to complete, operate, and maintain the project, subject to the limitations
 15 provided in KRS 175B.020(4):

- 16 (a) To enter into agreements as necessary to facilitate the development,
 17 construction, maintenance, operation, repair, or financing of projects;
 18 (b) To directly or indirectly construct, reconstruct, maintain, repair, operate, and
 19 regulate projects within the Commonwealth, or contract with another entity
 20 for these services;
 21 (c) To issue project revenue bonds of the issuing authority payable solely from
 22 the tolls, revenues, rentals, funds from any grant anticipation revenue vehicle
 23 (GARVEE), funds appropriated by the state or federal government, and any
 24 other funds pledged for their payment, for the purpose of paying all or any
 25 cost of a project, and to refund any of its bonds;
 26 (d) L. To fix, revise, charge, and collect tolls for transit over any project
 27 constructed by it, and for any ancillary or connector routes affected by the

1 project;

2 2. No tolls shall be authorized by any developing or issuing authority as
 3 a part of any development agreement or any financial plan for any
 4 project involving the federal interstate highway system that connects
 5 the Commonwealth with the state of Ohio.

- 6 (e) To establish and enforce rules and regulations for the use of a project;
- 7 (f) To acquire and hold any of the following in the name of the developing
 8 authority, and to dispose of them as the developing authority deems necessary:
- 9 1. Real and personal property, including lands and structures;
 - 10 2. Rights;
 - 11 3. Rights-of-way;
 - 12 4. Franchises;
 - 13 5. Easements and other interests in lands, including lands lying under water
 14 and riparian rights; and
 - 15 6. Any other item or asset necessary to accomplish its mission;
- 16 (g) To designate the locations and establish, limit, and control points of access to
 17 the project, and to prohibit access to the project from any undesignated point;
- 18 (h) To make and enter into contracts and agreements in the performance of duties
 19 and the execution of powers under this chapter;
- 20 (i) To employ any consultants and to fix their compensation;
- 21 (j) To receive and accept contributions and grants from any source for or in aid of
 22 the construction of a project or the operation of the developing or issuing
 23 authority;
- 24 (k) To accept interest rate subsidies, rebates, tax credits, or guarantees as provided
 25 in the American Recovery and Reinvestment Act of 2009, or as may be
 26 provided in subsequent federal legislation providing support to or credit
 27 enhancement of governmental obligations;

- 1 (l) To expend any funds provided under this chapter in advertising the facilities
2 and services of a project to the traveling public;
3 (m) To enter into lease agreements with the department; and
4 (n) To do acts necessary or convenient to carry out the powers expressly granted
5 in this chapter.

6 (2) Projects may be developed in conjunction with other road development efforts of
7 the Commonwealth that are in compliance with Federal Highway Administration
8 requirements.

9 (3) Projects developed pursuant to this chapter shall:


- 10 (a) Comply with the requirements of KRS Chapters 45A, 174, and 176;
11 (b) Be included in the most recently enacted biennial highway construction plan;
12 and
13 (c) Comply with all relevant requirements of the Federal Highway
14 Administration.

15 ➔Section 15. The provisions of Sections 1 to 3 of this Act shall apply only to a
16 project for which the purchasing officer has submitted a written statement, pursuant to
17 subsection (4) of Section 3 of this Act, on or after the effective date of this Act.

18 ➔Section 16. Whereas the ability to advance necessary infrastructure projects is
19 enhanced by this Act, and the Act places agencies under a deadline to promulgate
20 administrative regulations, an emergency is declared to exist, and this Act takes effect
21 upon its passage and approval by the Governor or upon its otherwise becoming a law.



Speaker-House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved _____
Governor

Date _____